

†Sri M. V. RAMA RAO.—Sir, it is really not necessary to say anything except that this deletion has been proposed because it has been represented that it might cause hardship to persons who may be required to find court-fee stamp in villages where court-fee stamps may not be readily available. Therefore it is proposed to delete this word.

Mr. SPEAKER.—I will put the amendment. The question is:

“That in clause 10 in sub-item (ii) of item (2) the word panchayat” shall be deleted.

The amendment was adopted.

Mr. SPEAKER.—Now the clause as amended. The question is:

“That clause 10, as amended stand part of the Bill.”

The motion was adopted

Clause 10, as amended, was added to the Bill.

Mr. SPEAKER.—The question is:

“That clause 1, the Title and the Preamble stand part of the Bill”.

The motion was adopted

Clause 1, the Title and the Preamble were added to the Bill

Motion to pass.

Sri M. V. RAMA RAO.—Sir, I beg to move:

“That the Mysore Court-fees and Suits Valuation (Amendment) Bill, 1963 as amended be passed.”

Mr. SPEAKER.—The question is:

“That the Mysore Court-fees and Suits Valuation (Amendment) Bill, 1963 as amended be passed.”

The motion was passed.

BOMBAY AGRICULTURAL PRODUCE MARKETS (MYSORE AMENDMENT) BILL, 1963

Motion to consider.

Sri RAMAKRISHNA HEGDE (Minister for Co-operation and Development).—Sir, I beg to move:

“That the Bombay Agricultural Produce Markets (Mysore Amendment) Bill, 1963 be taken into consideration.

Mr. SPEAKER.—Motion moved:

“That the Bombay Agricultural Produce Markets (Mysore Amendment) Bill 1963 be taken into consideration.”

Sri RAMAKRISHNA HEGDE.—Sir, this is a small amending Bill with a view to amending the law relating to the regulated market committee that is in force in Bombay Karnatak area, that is in the four districts of Belgaum Division.

In view of the decision of the Supreme Court in Mohammed Hussain Gulam Mohammed vs. State of Bombay declaring rules 53, 54, 65, 66 and 67 of the Bombay Agricultural Produce Markets Rules to be *ultra vires* the Bombay Agricultural Produce Markets Act, 1939, in certain respects and holding that a market is not properly established when it is established by a market committee without a direction from the State Government as required by Section 5 of the Act, difficulty has arisen in enforcing the provisions of the Act and the rules in the Bombay area of the state where the Act is in force. Validating legislation to overcome the difficulties has been undertaken by the Maharashtra and Gujarat Governments where the said Act is in force. It is considered necessary to undertake similar legislation in this State to validate the action already taken and to enable the Agricultural Produce Market Committees in the Bombay area to carry on their functions. Hence this Bill.

We have sought to amend the existing Act with regard to 3 or 4 points. We have proposed to amend section 2 of the Act and we have sought to insert market proper in the definition clause. Because, in the present Act market proper is not clearly defined anywhere and that has created a lot of difficulties. Secondly, we have also sought to amend section 4A of the present Act. This section deals with the market proper. Here the main difficulty we experienced is that because market proper was not clearly defined, the rules that were formulated under the Act were found to be *ultra vires*. Then the next amendment is to Sec. 5A. Section 5A of the present Act deals with the establishment of market committee. Here it is necessary under the present Act that before the market committee gives licence to the traders, it should be preceded by a specific direction of the Government. In certain cases this was not fulfilled and therefore it has been found necessary that this section be suitably modified. Then the next amendment is to section 29. This is to validate certain acts and things done and the constitution of markets prior to the amendments now proposed to the Bombay Agricultural Produce Markets Act, 1939. Hence, I wish to state that is not a controversial measure. It is only with a view to validating certain things that have already been done, which have been found in view of the Supreme Court decision, not to be *intra vires*. I commend this Bill for the acceptance of this House.

† **Sri V. S. PATIL** (Belgaum-I).—I have to differ from the Minister when he says that this is not a controversial measure that it is a very simple measure. Of course, from the amendments that have been placed before this House, it is very small but it cannot be said to be of non-controversial nature. It is a Bill which is going to set at naught the rulings given by the civil authorities, Civil Courts including the Supreme Court of India. When we pass a legislation and when Government frames rules under that legislation, it is expected that the

Government machinery will work properly and within the framework of the legislation passed by this House. If they commit mistakes and frame rules which are *ultra vires* of the Act and when the highest judicial authority in the country, that is, the Supreme Court decides that the particular rules are *ultra vires*, the Government have absolutely no right to frame them and all acts under those rules are invalid and void. When the Supreme Court declares it to be so, then Government try to rectify their own rules by passing a similar legislation. This is, I think, most unwanted and most careless work on the part of the Government. In this particular case.....

Mr. SPEAKER. Which Government framed Rules and in what year?

Sri V. S. PATIL.—The rules might have been framed even by the British Government. These rules are being enforced by this Government and this Government has also responsibility for the acts of their predecessors. This Government is trying to rectify or validate the Acts which have been declared as *ultra vires* by the Supreme Court and this is most unjust, improper, setting at naught the opinion of the highest judiciary in our country.

Mr. SPEAKER.—Three Governments are doing it.

Sri V. S. PATIL.—It may be one hundred Governments. The machinery is the same.

Sri RAMAKRISHNA HEGDE.—Similar amendments were also made by the other two Governments—the Government of Maharashtra and the Government of Gujarat. This was challenged in the Supreme Court and the Supreme Court has held that the amendments that have been made are allright. You were a member of the Bombay Legislature.

Sri V. S. PATIL.—I was not a member of the Government; I was a member of the legislature. We point out the defects but the Bill will be passed. Sir, this judgment is given by the Supreme Court in petition No. 129 of 59 and it was decided on 2-5-61. In that judgment, they have clearly stated that the rules just now quoted by the Minister is *ultra vires* and no fee can be put on that. The Hon'ble Minister himself has introduced a Bill which will consolidate the law relating to the regulated markets and that bill has been thoroughly discussed by this House and referred to a Joint Select Committee. I think, the Select Committee also has discussed the bill threadbare and the report is about to be placed before this Hon'ble House. If the Minister had cared for getting that report presented in this House during this session, this amendment would not have been necessary at all. This is the background. When we are in possession of a separate bill which will over-ride all the defects and when that is pending, where is the necessity to bring a separate legislation again, just to amend a particular clause in the old Act? Sir, I would not have opposed this Bill but for the intention of bringing it. The intention of the Government in bringing this bill is not *bona fide*. It is only to favour a group of individuals.

(SRI V. S. PATIL)

in a particular place, i.e., Nippani. In no other Market Committee in the whole of North Karnataka this question has arisen. There is no dispute at all. It refers to only one and that is Nippani. This is brought to take vengeance upon certain class of people residing in that town.

Mr. SPEAKER.—How?

Sri V. S. PATIL.—Because the merchant class of that area were against this Bill. There are so many contentions, so many objections for the passing of this Bill by the merchants and the cultivators of that locality and on behalf of that committee. Government wants to see that their men who have got elected recently to this committee which is according to the provisions of the old Act are helped because they cannot function at all as their acts would be nullified by the Supreme Court. That is why they want to favour these people and with that main reason this piece of legislation has been brought. If the Government wants to use its power just to favour a particular section of the people or a particular place as against the others, then that should not be allowed to be passed in this Hon'ble House. Sir, for the information of this House, I may bring to your notice that this Act applied to Nippani and a Committee was appointed on 21-2-1958. The commodities which came under the purview of this Market Committee were only gur, ground-nuts and chilly—only three. On 20-7-1959, Government included tobacco and the controversy began. Till then, there was no controversy. The main contention of the tobacco merchants is, since tobacco is a commodity on which Central Excise has been levied and controlled by the Central Government through their officers, who should these people be taxed again by this Market Committee. That would mean, a double control over the merchants who deal with tobacco. They say that this double control should not be there. In spite of all this, licensing has been brought into force since 1-3-1963. This the dispute between the Market Committee and the tobacco merchants and since the judgment is there, the merchants filed a civil suit in the civil court restraining these people from asking to pay the fee or to take out licenses under a invalid rule. The court has been pleased to give a temporary injunction. That is a suit of 89 of 63.

† Sri C. J. MUCKANNAPPA.—On a point of clarification. Sir when a matter is before a court of law and when there is temporary injunction restraining the authorities elected to the Regulated Market Committee from collecting the amount or compelling the people to obtain the licence, can the Government bring in a law amending a particular section just to get over the difficulty?

Mr. SPEAKER.—The Hon'ble Member has said that and Sri Patil will answer it. If he does not, I will do it.

(laughter)

Sri V. S. PATIL.—So, Sir, the authorities have been restrained by the civil court and the suit is still pending. When the matter is in the

civil court and when, according to the judgment of the Supreme Court, the suit is bound to be decreed in favour of the merchants, is it equitable on the part of the Government to bring in a legislation in order to nullify the orders of the Civil Court?

Mr. SPEAKER.—Sri Muckannappa has asked whether the Government is competent to bring in this Bill.

3-00 P. M.

Sri V. S. PATIL.—I used the words “equitable and justifiable.” I did not use the word “incompetent”, because this House is competent to pass any law whether it is *ultra vires* or *intra vires*. It is a matter for the civil court to decide. But what I am submitting is that this House should not be allowed to be used by the Government in order to set at naught the rights established in civil courts and to cripple the power of the civil court by resorting to the powers of this House. My submission is that we should not give any consent to the Government for passing such a legislation wherein the conflict will be between the executive and the judiciary. That is why I submit that when the matter is siezed up by the civil court and is pending and when the Government is bound to be defeated, this House should not go to the rescue of Government.

Sri C. J. MUCKANNAPPA.—I want a ruling on this issue from the Chair. Whenever a question is put by the Members, if the Government says that the matter is pending in a court, we find the Chair ruling out the question. Such being the case, I wonder if the Government is entitled to amend a law in matter which is pending in the court.

Mr. SPEAKER.—I would like to be enlightened by Sri Patil.

Sri V. S. PATIL.—It is not for me to say, Sir. My submission is that this House should not be made subordinate to the wishes of the Government for such a paltry thing like this which comes in the way of the administration. A comprehensive bill was brought before the House and is before the Joint Select Committee and I hear the report is under way. If it is not ready yet, the Minister should take the blame for carelessness and not the Members. I expect that atleast during the next session, if not during this session, we would pass the bill into law and it is a question of two more months. What is the urgent necessity to bring this Bill. It is only to help a particular committee and not for the general public. If it is of general applicability throughout the State, I can understand. But the House should not be a party to save the Government from particular difficulties, particularly if the difficulty arises from a court judgment. We should not give undue importance to the committee which is doing illegal things.

Another difficulty is that since the passing of the judgment by the Supreme Court, the merchants have not taken out any licence at all. The question that would arise is: what will be the effect. According to the rules, those persons are liable to be punished. This Bill is creating a sort of exemptions for these merchants. What about the intermediate

(SRI V. S. PATIL)

period, the dealings done by them between the days on which the previous licences expired and the day on which this Bill will come into force. That will create unnecessary trouble between the committee and the merchants of this place. This legislation instead of solving certain problems will create new problems which are likely to come up again before the Supreme Court and the Judges of that Court may blame us for being negligent or for acting as the handmaid of the executive. Therefore I would request the Hon. Minister to withdraw the bill.

Chair's ruling : Competence of Legislature to Pass a Bill during the Pendency of a Civil Suit.

Mr. SPEAKER.—The Hon'ble Member Sri Muckannappa has raised a point that on account of the pendency of a civil suit in a court, this Bill cannot be brought before the House. Throughout the length of his arguments, Sri V. S. Patil did not choose to raise the point and say that this House was not competent to discuss it and that the Hon'ble Minister, who has brought this Bill before the House, is not competent to bring it. On the other hand this question was raised in the form of a clarification first and then a ruling was demanded of me. Sri Patil did not say that the House was not competent. I am emphasising this aspect, for the reason that as a seasoned parliamentarian and good lawyer, Sri Patil was perhaps aware that the House is competent and a certain decision has been given by the Supreme Court never infringes upon the sovereign powers of this House to enact such laws as it deems fit. Neither the Supreme Court nor other civil courts have a right to adjudicate upon the powers of legislation of this House. The only power that the civil courts, including the Supreme Court, have to say that the legislation passed is invalid.

We can entertain the Bill. It is left to the House. The circumstances of that particular case is that a particular rule that is framed or the delegation of powers made under the rule framed under an Act which was passed, not by this Legislature, but by some other Legislature prior to re-organisation, is *ultra vires* of the powers of the Government. Therefore, the delegation is invalid, upon such invalid delegation, if the Government had chosen to frame rules, automatically they also become invalid. Therefore, what the Supreme Court has decided is, not that this Legislature has not got any powers to legislate but that the power of vesting in the Executive to frame a particular rule, which they do at a later stage, has not been properly done. Therefore, the rule framed is invalid. So, the powers of the Legislature are never doubted. So far as the pendency of the Civil suit is concerned, the House is not concerned with